

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1236 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

KISHORBHAI BABULAL SHAH

Versus

MUKESH VASANTLAL GHIYA

Appearance:

MR MJ DAGLI for the Petitioner.

MR HN JHALA for Respondent No. 1.

MR.S.A.PANDYA,ADDL.PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 24/10/96

ORAL JUDGEMENT

The applicant, who is the original accused, has filed this application under section 482 of the Criminal Procedure Code against the order passed by the learned Metropolitan Magistrate, Court No.4, Ahmedabad, in Criminal Case No.4715/88 whereby the learned Magistrate has issued a bailable warrant in the sum of Rs.1000/-

for the alleged offence punishable under section 406 of the Indian Penal Code and a search warrant under section 93 of the Code of Criminal Procedure.

Reading the complaint, it appears that the respondent No.1, who is the original complainant, is doing the architect work and manufactures furniture. He prepared a counter and a glass-partition at his house for one of his customers. The applicant came to the house of the complainant and told him that he has hired a handlorry for his own goods and that he will carry the counter and the partition and deliver the same at the complainant's office. Relying on his words, the complainant handed over the furniture. Since the furniture had not reached the destination, the complainant contacted the applicant and inquired about the same. However, it is alleged that the applicant gave evasive reply and false promises. The complainant, therefore, filed the present complaint for the alleged offence punishable under section 406 of the Indian Penal Code and also applied for a search warrant under section 93 of the Code of Criminal Procedure. As stated above, the learned Magistrate has issued bailable warrant in the sum of Rs.1000/- under section 406 and a search warrant under section 93 of the Criminal Procedure Code. It appears that thereafter the furniture have been attached and after hearing the parties the learned Magistrate has passed an order to hand over the furniture to respondent No.1 the original complainant.

Reading the complaint as a whole, I am of the opinion that none of the ingredients of section 406 is satisfied warranting issuance of process by the learned Magistrate. The dispute, prima facie, appears to be a civil in nature and, therefore, filing of a complaint for the alleged offence of section 406 is nothing but to pressurise the applicant. Thus, with a view to prevent the abuse of the process of law, the process issued by the learned Magistrate is required to be set aside. In view of the fact that the learned Magistrate has passed an order to hand over the furniture in question to respondent No.1, if the applicant has any claim over the same, he is entitled to take proceedings in accordance with law.

In the result this petition is allowed. The order dated 1st November, 1988 passed by the learned Metropolitan Magistrate, Court No.4, Ahmedabad in Criminal Case No. 4715/88 is set aside. Rule is made absolute accordingly. Interim relief stands vacated.

True copy